



STATE OF MICHIGAN
COURT OF APPEALS

July 16, 2002

WILLIAM C. WHITBECK
CHIEF JUDGE

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Honorable Maura D. Corrigan
Chief Justice, Michigan Supreme Court
Cadillac Place, Suite 8-500
3034 West Grand Blvd.
Detroit, MI 48202-6034

Re: Proposed Court Rule Amendments

Dear Chief Justice Corrigan:

Enclosed for consideration by your Court are the following proposed amendments of the Michigan Court Rules: (1) delay reduction amendments - MCR 7.204(H), 7.210(B) & (G), and MCR 7.212(A) & (G); and (2) vexatious proceedings - MCR 7.211(C)(8) and MCR 7.216(C). Our Judges approved these changes at our June 19, 2002 Judges' meeting.

The delay reduction amendments are the product of this Court's Delay Reduction Work Group and we request your Court's approval of them as part of this Court's concerted effort to reduce delays in evaluating, processing, and deciding cases on appeal. We request an effective date for these rule changes of September 1, 2003.

The vexatious proceedings amendments are intended to establish a time limit and procedure for filing a motion for damages for vexatious proceedings.

As always, Judge Helene N. White, as chairperson of the Court of Appeals Rules Committee, and I will be happy to provide your Court with whatever assistance it requests in considering and implementing these proposed amendments.

Sincerely,

William C. Whitbeck
Chief Judge
Michigan Court of Appeals

Enclosures

cc: Court of Appeals Rules Committee members
Corbin Davis, Chief Clerk, Michigan Supreme Court
Linda Mohny Rhodus, Administrative Counsel, Michigan Supreme Court
Evelyn C. Tombers, Chairperson, State Bar Appellate Practice Section

Court of Appeals Proposal for Court Rule Changes
MCR 7.216(C) & MCR 7.211(C)

Rule 7.216 Miscellaneous Relief (new matter is underlined)

(A)-(B) [Unchanged.]

(C) Vexatious Proceedings.

(1) The Court of Appeals may, on its own initiative or the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because

(a) [Unchanged.]

(b) [Unchanged.]

(2) [Unchanged.]

Rule 7.211 Motions in the Court of Appeals (new matter is underlined)

(A)-(B) [Unchanged.]

(C) Special Motions. [Unchanged.]

(1)-(7) [Unchanged.]

(8) Vexatious Proceedings. A party's request for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule. A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule. A party may file a motion for damages or other disciplinary action under MCR 7.216(C) at any time within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious.

Comments:

These rule changes are intended to set a time limit and a procedure for filing a motion for damages for vexatious proceedings. To assure jurisdiction to consider the issue, and to provide finality to the appeal, the motion must be filed within 21 days after the date of the order or opinion that disposes of the matter that is asserted to have been vexatious. If the assertion concerns a specific motion or motions filed by an opposing party, the motion for damages or other disciplinary action must be filed within 21 days of the date of the order disposing of those motions. If the assertion concerns the entire appeal, the motion for damages or other disciplinary action must be filed within 21 days of the date of the order or opinion that disposes of the entire appeal. The request must be contained in a motion; the Court will not be obligated to "decide" a request that is stated in any pleading that is not a motion.

Court of Appeals Proposed Rule Amendments

Rule 7.204 Filing Appeal of Right; Appearance

(A) – (G) (Unchanged.)

(H) Docketing Statement. In all civil appeals, within ~~28~~ 14 days after the claim of appeal is filed, the appellant must file ~~two copies~~ one copy of a docketing statement with the clerk of the Court of Appeals and serve a copy on the opposing parties.

(1) – (4) (Unchanged.)

Staff Comment. This change is requested by the Court of Appeals as part of its delay reduction program. The Court anticipates that the shortened time will enable its settlement office to evaluate each case earlier in the appeal, thus reducing the time and money expended by the Court and the parties before possible settlement.

Rule 7.210 Record on Appeal

(A) (Unchanged.)

(B) Transcript.

(1) *Appellant's Duties; Orders; Stipulations.*

(a) – (b) (Unchanged.)

(c) In an appeal from the circuit court in any action that relates solely to an order granting or denying summary disposition in whole or in part, or an order on motion for reconsideration thereof, only that portion of the transcript concerning the order appealed from need be filed. The appellee may file additional portions of the transcripts.

(d) – (f) Renumbered from (c) – (e).

(2) (Unchanged.)

(3) *Duties of Court Reporter or Recorder.*

(a) (Unchanged.)

(b) Time for Filing. The court reporter or recorder shall give precedence to transcripts necessary for interlocutory criminal appeals and custody cases. The court reporter or recorder shall file the transcript with the trial court or tribunal clerk within

(i) – (ii) (Unchanged.)

(iii) 42 days after it is ordered in any other interlocutory criminal appeal, ~~or~~ custody case, or appeal that relates solely to an order granting or denying summary disposition in whole or in part;

(iv) (Unchanged.)

The Court of Appeals may extend or shorten these time limits in an appeal pending in the court on motion filed by the court reporter or recorder or a party.

(c) – (g) (Unchanged.)

(C) – (F) (Unchanged.)

(G) Transmission of Record. Within ~~21~~ 14 days after the briefs have been filed or the time for filing the appellee's brief has expired, or when the court requests, the trial court or tribunal clerk shall send to the Court of Appeals the record on appeal in the case pending on appeal, except for those things omitted by written stipulation of the parties. Weapons, drugs, or money are not to be sent unless the Court of Appeals requests. The trial court or tribunal clerk shall append a certificate identifying the name of the case and the papers with reasonable definiteness and shall include as part of the record:

(1) – (3) (Unchanged.)

(H) – (I) (Unchanged.)

Staff Comment. These changes are requested by the Court of Appeals as part of its delay reduction program. Summary disposition appeals involve a minimal number of relatively short transcripts while comprising about 20% of the Court's caseload. Shortening the time to produce these transcripts will pose a minimal burden on the court reporters while positively impacting a substantial portion of the Court's caseload. Shortening the time to forward lower court records from 21 to 14 days will positively impact every appeal pending before the Court.

Rule 7.212 Briefs

(A) Time for Filing and Service.

(1) *Appellant's Brief.*

(a) Filing. The appellant shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) – (ii) (Unchanged.)

(iii) ~~56~~ 42 days after the claim of appeal is filed, the order granting leave is certified, or the transcript is filed with the trial court or tribunal, whichever is later, in all other cases. In a criminal case in which substitute counsel is appointed for the defendant, the time runs from the date substitute counsel is appointed or the transcript is filed, whichever is later. ~~The parties may extend the time within which the brief must be filed for 28 days by signed stipulation filed with the Court of Appeals.~~ The Court of Appeals may extend the time on motion, but only for the specific time required and only for good cause shown.

(b) (Unchanged.)

(2) *Appellee's Brief.*

(a) Filing. The appellee shall file 5 typewritten, xerographic, or printed copies of a brief with the Court of Appeals within

(i) (Unchanged.)

(ii) 35 days after the appellant's brief is served on the appellee, in all other cases. ~~The parties may extend this time for 28 days by signed stipulation filed with the Court of Appeals.~~ The Court of Appeals may extend the time on motion, but only for the specific time required and only for good cause shown.

(B) - (F) (Unchanged.)

(G) Reply Briefs. An appellant or a cross-appellant may reply to the brief of an appellee or cross-appellee within ~~21~~ 14 days after service of the brief of the appellee or cross-appellee. Reply briefs must be confined to rebuttal of the arguments in the appellee's or cross-appellee's brief and must be limited to 10 pages, exclusive of tables, indexes, and appendices, and must include a table of contents and an index of authorities. No additional or supplemental briefs may be filed except as provided by subrule (F) or by leave of the Court.

(H) - (I) (Unchanged.)

Staff Comment. These changes are requested by the Court of Appeals as part of its delay reduction program. The amended rules will shorten the time for filing appellant's brief from 56 to 42 days, delete the provision of a stipulation to extend time to file either appellant's or appellee's brief, allow extensions of time by motion only for the specific time required and only for a maximum of 14 days in all but the most extraordinary cases, and restrict the time for filing reply briefs to 14 days (consistent with the time for forwarding the lower court record).

Mika Meyers Beckett & Jones PLC

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Attorneys at Law

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Ronald J. Clark	Stephen J. Mulder	Ross A. Leisman	Benjamin A. Zainea	Steven L. Dykema	³ Illinois
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July 11, 2003

VIA FACSIMILE TRANSMISSION AND FIRST CLASS MAIL

Hon. William C. Whitbeck
Chief Judge - Michigan Court of Appeals
Hall of Justice - 925 West Ottawa
P.O. Box 30022
Lansing, MI 48909-7522

Re: Intake Delay Reduction Committee

Dear Judge Whitbeck:

As you know from your telephone discussion with Janet Welch earlier this week, our committee has engaged the services of two consultants to assist us in analyzing and interpreting the information that your staff has provided. We very much appreciate the courtesy you have extended and your commitment to provide our committee with whatever data you can afford that will be helpful to our efforts. We remain committed to work with the Court in a spirit of cooperation in order to hopefully develop a strategy which will achieve the Court's goal of further reducing the time delay you have experienced with regard to appellate cases, while at the same time maintaining a sufficient time frame for appellate counsel to adequately prepare the pleadings and briefs necessary to properly represent their clients.

Following a preliminary review of the information provided, it was immediately apparent to the members of the committee that, in order to properly evaluate case differentiation options, we would need input from persons more experienced in analyzing such information. As you can imagine, although we acted expeditiously, the search did cause an unanticipated delay in our progress. Nevertheless, with the capable assistance of Ann Vrooman and Jim Macomb, we have reviewed the data and it has now become apparent that we need more information in order to effectively develop appropriate options to assist the Court in achieving intake delay reduction. Accordingly, Ann and Jim have identified the additional information essential to developing one or

Hon. William C. Whitbeck
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more models for effectively addressing the delay problems. They have indicated that the data file should be in a dbf format and hope that a code book can be provided. The optimum time span for the information we would like to review can include all cases disposed of between January 1, 2000, and June 30, 2003. If that is overly burdensome, we would appreciate such information for all cases disposed of during at least the past 12-18 months. Our consultants have advised that the information for each case should, if possible, include the following:

- | | |
|------------------------------------|---|
| • Case Type Code | • Date of Oral Argument |
| • Case Group Code (if available) | • Date Submitted Without Oral Argument |
| • Summary or Non-Summary Indicator | • Date of Disposition |
| • Disposition Type | • Length of Brief (if available) |
| • Date of Filing of Claim | • Extensions for Brief (if available) |
| • Date of Order Granting Leave | • Motion for Extension of Brief |
| • Date Transcript Filed | • Motion for Brief Extension Granted or Denied |
| • Date Appellant Brief Filed | • If Brief Extension, Indication of Whether it was by Stipulation or Order (if available) |
| • Date Appellee Brief Filed | |
| • Notice Date | |

I regret that this request will necessitate further inconvenience and effort on the part of your staff. In part, this request has been made necessary by our committee members' lack of experience in analyzing the data and, unfortunately, not fully appreciating exactly what data was needed for an appropriate analysis. We remain committed to the joint objective of improving the administration of justice and reducing the delay problems the Court has experienced. According to our consultants, this information will provide us with the tools necessary to assist the Court in developing a mutually beneficial program for accomplishing these purposes.

We intend to provide you with a proposal as quickly as possible. We had hoped to do so by the end of July and will continue to work within that time frame. The quicker we can obtain this information, the sooner we can develop options for your consideration.

Please call me, or Janet, at your convenience with any questions you may have. Otherwise, we sincerely appreciate your continuing indulgence and patience.

Very truly yours,


Scott S. Brinkmeyer

SSB:lj

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STATE OF MICHIGAN
COURT OF APPEALS

July 17, 2003

WILLIAM C. WHITBECK
CHIEF JUDGE

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Mr. Scott S. Brinkmeyer
Mika Meyers Beckett & Jones, PLC
900 Monroe Avenue, NW
Grand Rapids, Michigan 49503-1423

RE: Intake Delay Reduction Committee

Dear Mr. Brinkmeyer:

Thank you for your letter of July 11, 2003. I think it is important that I put this reply in its proper context. As you are aware, the Court of Appeals has been engaged for well over a year in a concentrated effort to reduce delay on appeal to this Court. Our data reflect that in 2001, the year that we selected as our base year, the Court disposed of approximately 7,600 cases, of which 3,100 were disposed by opinion. On average, the Court disposed of these opinion cases in 2001 within 653 days of filing. In March of 2002, the Judges of the Court determined that this figure was not within acceptable limits and adopted a comprehensive delay reduction plan. To date, the results of this plan have been quite impressive. As shown below, the average number of days that it takes to decide an opinion case has declined dramatically:

<u>2001</u>	<u>2002</u>	<u>2003 1st Quarter</u>
653	603	556

Our first efforts were directed at reducing the delay in the Judicial Chambers; we decided that the Judges of this Court must lead the way in any delay reduction effort. Consequently, we take some considerable pride in the fact that the decline in the time it takes to decide an opinion case has been particularly marked in the Judicial Chambers:

<u>2001</u>	<u>2002</u>	<u>2003 1st Quarter</u>
61	40	28

We have also made considerable progress in reducing the delay that occurs in the "Warehouse," the term that we apply to cases that have come out of the Intake phase but cannot be assigned to our Research Division due to lack of capacity in that Division:

<u>2001</u>	<u>2002</u>	<u>2003 1st Quarter</u>
271	261	234

While this progress is significant, more needs to be done in this area and, as you know, in this session of the Legislature we were successful in achieving increases in certain of our fees that will generate approximately \$525,000 in revenues that we do not currently collect. While the Governor has not yet signed our appropriations bill and the fee increase bills, we have every confidence that she will do so within the framework of the finalization of the overall budget for the state. With these additional resources available to us, we believe that we can eliminate the Warehouse entirely, commencing with those cases filed after September 30, 2004.

This leaves the Intake phase as the last remaining problem that we must address. In 2001, an opinion case spent 260 days on average in Intake. In 2002, that time was 240 days and in the first quarter of 2003 it was 239 days. The Court's objective is to reduce the time a case spends in Intake to 173 on average days for those cases filed on and after September 1, 2003. We have proposed to meet that objective through adoption of the various changes to the court rules that have been the subject of much discussion with representatives of the State Bar of Michigan. Ultimately, I asked the Supreme Court to delay its consideration of our proposed rule changes so that we could attempt to work out a joint proposal that would be acceptable to the State Bar and compatible with our delay reduction objectives. The bottom line still remains, however: we need to cut approximately 66 days from the time an opinion case spends in the Intake phase. Unless we can achieve such a reduction, we cannot reach our objective of deciding opinion cases in 300 days on average. Similarly, unless we decide our opinion case in 300 days on average, we cannot reach our overall goal of deciding 95% of all cases within 18 months of their filing.

It is within this context that I must respond to your letter of July 11. You indicate that your consultants believe that they need more information in order to effectively develop appropriate options to assist us in achieving intake delay reduction. You have asked for a data file containing a wide variety of information for all cases disposed of between January 1, 2000 and June 30, 2003. Unfortunately, we simply do not have the staff resources to undertake the extensive programming and data collection necessary to respond to this request. Further, even if we were able to undertake such a significant project, there is no possibility that we could make the information available to you in time for your consultants to analyze it intelligently and respond with a proposal by August 1, 2003.

I therefore, reluctantly, must conclude that it will not be possible for the Court and the State Bar to make a joint proposal to the Supreme Court at this time. I will therefore, during August, prepare a position paper for the Supreme Court outlining the overall status of the delay reduction efforts at our Court, responding to the State Bar's previous position statements, and advancing the rule change proposals that we believe to be sensible under the circumstances.

This does not mean, however, that we wish to abandon our efforts to reach agreement with the State Bar on this vitally important subject. We are certainly willing to consider a differentiated case management proposal from the State Bar in addition to, but not in lieu of, our rule change proposals. To this end, we can make available to you and your consultants the public printouts of our computerized registers of actions for all cases that our Court decided by opinion in 2002. I have attached a copy of such a printout for Case No. 225795, *People v Baugh*,

Mr. Scott S. Brinkmeyer
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as well as an explanatory chart labeled "Case Information." I believe that with this information, your consultants should be able to derive the vast majority of the data that you have requested.

In closing, let me again thank you for the spirit of cooperation in which you and the other members of the Intake Delay Reduction Committee of the State Bar have approached this matter. While we have not been able to reach an agreement for a joint proposal in the short term, I believe that this has been a most productive effort and I remain confident that we may be able to agree on a differentiated case management system in the longer term.

Best personal regards

A handwritten signature in black ink, appearing to read "W. Whitbeck", with a stylized flourish at the end.

William C. Whitbeck
Chief Judge

Enclosures
cc. COA Delay Reduction Work Group

Resources Used by Motions to Extend Time

(Cases Decided by Opinion in Specified Years)

Case Type Category	Data	2001	2002	2003	Grand Total
CR	Number of Cases	1432	1540	445	3417
	Number of Cases with Motions to Extend	825	856	253	1934
	Percent of Cases with Motions	57.61%	55.58%	56.85%	56.60%
	Days spent on Motions	32508	35056	10696	78260
	Percent of Days spent on Motions	8.83%	8.86%	9.35%	8.91%
	Days Delay Per Case	22.70	22.76	24.04	22.90
CV	Number of Cases	1069	1230	384	2683
	Number of Cases with Motions to Extend	294	334	105	733
	Percent of Cases with Motions	27.50%	27.15%	27.34%	27.32%
	Days spent on Motions	9996	11676	3864	25536
	Percent of Days spent on Motions	3.64%	3.69%	3.92%	3.70%
	Days Delay Per Case	9.35	9.49	10.06	9.52
FA	Number of Cases	410	483	157	1050
	Number of Cases with Motions to Extend	108	145	47	300
	Percent of Cases with Motions	26.34%	30.02%	29.94%	28.57%
	Days spent on Motions	3780	5040	1568	10388
	Percent of Days spent on Motions	3.59%	4.06%	3.89%	3.85%
	Days Delay Per Case	9.22	10.43	9.99	9.89
Other	Number of Cases	121	209	129	459
	Number of Cases with Motions to Extend	840	2044	3320	11923
	Percent of Cases with Motions	25	60	54	139
	Days spent on Motions	840	2044	2016	4900
	Percent of Days spent on Motions	2.70%	3.81%	6.08%	4.15%
	Days Delay Per Case	6.94	9.78	15.63	10.68
All Types	Number of Cases	3032	3462	1115	7609
	Number of Cases with Motions to Extend	1252	1395	459	3106
	Percent of Cases with Motions	41.29%	40.29%	41.17%	40.82%
	Days used by Motions	47124	53816	18144	119084
	Percent of Days used by Motions	6.05%	6.05%	6.33%	6.09%
	Days Delay Per Case	15.54	15.54	16.27	15.65

Resources Used by Stipulations To Extend Time

(Cases Decided by Opinion in Specified Years)

Case Type Category	Data	2001	2002	2003	Three Years
CR	Number of Cases	1432	1540	445	3417
	Number of Cases with Stips	913	981	281	2175
	Percent of Cases with Stips	63.76%	63.70%	63.15%	63.65%
	Days used by Stips	37156	40012	11592	88760
	Percent of Days used by Stips	10.10%	10.11%	10.14%	10.11%
	Days Delay Per Case	25.95	25.98	26.05	25.98
CV	Number of Cases	1069	1230	384	2683
	Number of Cases with Stips	596	666	219	1481
	Percent of Cases with Stips	55.75%	54.15%	57.03%	55.20%
	Days used by Stips	24528	28140	8848	61516
	Percent of Days used by Stips	8.93%	8.90%	8.97%	8.92%
	Days Delay Per Case	22.94	22.88	23.04	22.93
FA	Number of Cases	410	483	157	1050
	Number of Cases with Stips	42	46	14	102
	Percent of Cases with Stips	10.24%	9.52%	8.92%	9.71%
	Days used by Stips	1708	1792	616	4116
	Percent of Days used by Stips	1.62%	1.44%	1.53%	1.53%
	Days Delay Per Case	4.17	3.71	3.92	3.92
Other	Number of Cases	121	209	129	459
	Number of Cases with Stips	55	118	72	245
	Percent of Cases with Stips	45.45%	56.46%	55.81%	53.38%
	Days used by Stips	2268	4564	2716	9548
	Percent of Days used by Stips	7.29%	8.50%	8.19%	8.09%
	Days Delay Per Case	18.74	21.84	21.05	20.80
All Types	Number of Cases	3032	3462	1115	7609
	Number of Cases with Stips	1606	1811	586	4003
	Percent of Cases with Stips	52.97%	52.31%	52.56%	52.61%
	Days used by Stips	65660	74508	23772	163940
	Percent of Days used by Stips	8.43%	8.37%	8.30%	8.38%
	Days Delay Per Case	21.66	21.52	21.32	21.55